

SUBJECT: Child support credit for Social Security benefits

COMMITTEE: Juvenile Justice and Family Issues — favorable, without amendment

VOTE: 7 ayes — Goodman, A. Reyna, E. Reyna, P. King, Menendez, Morrison, Naishtat

0 nays

2 absent — Nixon, Tillery

WITNESSES: For — Ronald Minks; Velma Minks; David Shelton, Texas Fathers Alliance

Against — None

On — Howard Baldwin, Office of the Attorney General; John J. Sampson

BACKGROUND: Family Code, ch. 154 establishes guidelines for the payment of court-ordered child support. A court determines the amount of the payment each month based on the obligor's net resources as outlined in sec. 154.062. These include salary and wage income, interest, dividends, royalties, net-rental income, severance pay, retirement benefits, pensions, trust income, annuities, capital gains, Social Security benefits, unemployment benefits, disability and workers' compensation, gifts and prizes, spousal maintenance, and alimony.

Family Code, sec. 154.132 sets forth child support guidelines for an obligor who is disabled and receives benefits as a result of any disability. If the obligor's child also receives benefits as a result of the parent's disability, then the court must subtract from the total amount of child support the value of the benefits paid to the child as a result of the obligor's disability.

Social Security benefits paid to or for a child are a separate benefit under Title 2 of the Social Security Act. Old Age, Survivors, and Disability Insurance (OASDI) pays a lump sum benefit to children under the age of 18 as a result of a parent's age or disability and does not affect the retiree's entitlement.

DIGEST: HB 2550 would amend Family Code, ch. 154 by adding sec. 154.133 to require the court to take Social Security benefits paid to a child as a result of the obligor's receiving old age benefits into account when determining the total amount of child support to be paid. The court would be required to subtract from the total child support payment the amount paid to or for the child as a result of the obligor's receipt of Social Security old age benefits.

HB 2550 would take effect September 1, 2001, and would not constitute a material change of circumstances sufficient to warrant modification of a court order rendered before the effective date.

SUPPORTERS SAY: HB 2550 is necessary to give retirees credit for Social Security benefits paid to a child when determining the total child support payment. Currently if a person must pay child support and that person receives Social Security old age benefits, the court is not required to take the Social Security payments into consideration when determining the total amount to be paid. The obligor is not credited for the Social Security benefits being paid to or for the child. For example, if an obligor is ordered to pay \$200 in child support per month, but the child is receiving \$100 in Social Security benefits, then the obligor actually is paying a total of \$300. If the court-ordered amount totals \$200, then the obligor should be credited toward the child support by the obligor's Social Security payments.

Under Family Code, sec. 154.132, a court currently is required to take into account an obligor's disability payments to a child and subtract them from the total amount owed for child support per month. It is logical to apply these guidelines to Social Security benefits as well.

OPPONENTS SAY: Crediting the obligor's Social Security benefits may not be in the best interest of the child. Courts now have the discretion to take these benefits into account if they so choose, and most courts would not give the credit absent this proposed legislation. The Social Security benefits paid to the child do not decrease the obligor's income, and so continuing these payments without the credit toward child support should not be a burden on the obligor.